

BOARD OF APPEALS

July 21, 2021

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 6:00 p.m.

AGENDA

DOCKET NO. AP2021-019: An appeal was made by Jason & April Sink for a variance from the 100 ft. minimum setback requirement from all property lines for animal husbandry structure to be 48 ft. from right side yard property line and 90 ft. from left side yard property line on property owned by the Appellant and located at 19315 Dogstreet Road, Keedysville, Zoned Preservation.-**GRANTED**

Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than July 12, 2021. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant's case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Paul Fulk, Chairman
Board of Zoning Appeals

**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

JASON SINK & APRIL SINK

APPELLANTS

APPEAL No. AP2021-019

OPINION

Jason Sink and April Sink (hereinafter, "Appellants") request variances from the required minimum 100 foot setback for all property lines for animal husbandry structures (Ordinance §5C.5(a), modified by §22.94(a)) for two (2) existing animal husbandry structures (hereinafter collectively, the "Structures"), to 48 feet from the right side yard setback, and to 90 feet from the left side yard setback, located on the subject property. The subject property is located at 19315 Dogstreet Road, Keedysville, Maryland, and is zoned Preservation. The Board held a public hearing on the matter on July 21, 2021.

The appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County, Maryland (hereinafter, "Ordinance") and upon proper notice to the parties and general public as required.

FINDINGS OF FACT

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellants are owners of the subject property located at 19315 Dogstreet Road, Keedysville, Maryland. The subject property is zoned Preservation (P).
2. A single-family dwelling is situate on the subject property, which is a roughly rectangular lot containing 1.91 acres land, which is partially fenced-in. Appellants purchased the subject property in 2015.
3. The Structures were "constructed" on the subject property by Appellants in a makeshift fashion, with fencing placed around, creating a perimeter enclosure.

Appellants use one of the Structures for turkeys (1 tom; 1 hen) and the other for chickens (16 hens). Such animal husbandry activities in the P Zoning District must comply with the 100 minimum setback requirements of the Ordinance unless variance(s) are granted.

4. Manure from the poultry is placed near the rear property tree line and excess in plastic bags disposed of in the landfill. Manure production is less than 6,000 tons annually.

5. Appellants consulted with the University of Maryland Extension office for guidance on nutrient management, have obtained an approved waste management plan and a nutrient management plan from the Washington County Soil Conservation District, and submitted letters from those offices.

6. Appellants submitted two written letter of support for the application from the neighbors to the immediate North of the subject property.

7. Appellants expressed they desire to move the Structures away from the neighbor in opposition to the variance application, but explained to do so would deprive the poultry of needed shade during sunny and hot conditions.

8. The neighbor to the immediate West of the subject property testified he believed the poultry were being kept in a poor habitat (makeshift and with branches on top of the perimeter fence) and was concerned about the care of the poultry. He testified that Appellants' fowl had more than once previously gotten into his yard and barn. He acknowledged having owned livestock himself recently, but when previously told by County staff that he would also need to obtain and comply with a nutrient management plan, decided to get rid of all of his livestock. He also testified as to trash and debris on the subject property that created an eyesore and had asked without success for Appellants to clean up.

9. Appellant is seeking the variances due to the the limited size of the lot, and the need to provide some shade for the poultry during sunny and hot conditions.

RATIONALE

The Board has authority to grant a variance upon a showing of practical

difficulty or undue hardship (Ordinance §§25.2(c) and 25.56).¹ “Practical difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and 3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare (Ordinance §25.56(A)).

“Undue hardship” may be found when: (1) strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and (2) the difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and (3) the hardship is not the result of the applicant’s own actions (Ordinance §25.56(B)).

Practical difficulty and undue hardship are the result of a property being unique. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994).

In this case, Appellants wife testified that the circumstances present a practical difficulty if the Structures are not allowed to remain in their current location, since the lot is not adequately sized to comply with the setback requirements of the Ordinance.

Appellant testified that they are trying to be good neighbors, and do take care of their poultry in a responsible way. Appellants want to have the ability to teach their children responsibility in raising and caring of the poultry, and to be able to use the fresh eggs they produce. The Board finds that there may be some lingering bad feelings from the neighbor in opposition due to the prior complaints about trash and debris, but a

¹ “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland court generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999)(citations omitted).

majority of the Board does not find that this testimony is sufficient to deny the application.

The Board finds that for the variances requested in this case, the limitation of the subject property, the impracticality of moving the Buildings, the need for the the Structures to keep the turkeys and chickens in separate housing, and the need for adequate shade for the health of the poultry, all combine to result in a practical difficulty on Appellant if the Ordinance were strictly enforced. The Board also finds that Appellant has approved waste and nutrient management plans, the placement of the manure in the very rear of the subject property, and has taken appropriate action to limit the chickens from escaping the subject property. For these reasons, the Board finds that strict compliance would prevent Appellant from using the subject property for a permitted purpose or render conformance unnecessarily burdensome (if not impossible), a lesser relaxation that that applied for would not give substantial relief, and granting the variances will observe the spirit of the Ordinance and secure public safety and welfare.

Therefore, Appellant's request for a variance from the minimum 100 foot right side yard setback to 48 feet and from the minimum 100 foot left side yard setback to 90 feet for the Structures on the subject property is GRANTED, by a vote of 3-2. Said variance is granted upon the conditions that: (1) the maximum number of chickens Appellants may keep on the subject property at any time is twenty (20); (2) that Appellants shall obtain a zoning certificate for animal husbandry; (3) that a building permit shall be required for any animal husbandry structure on the subject property which is larger than 400 square feet, has footers, and/or is over one story; and (4) that performance of the animal husbandry activities and location of the Structures will continue to be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: August 20, 2021

Notice of Appeal Rights

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the jurisdiction, may appeal the same to the Circuit Court for Washington County within thirty (30) days, in a manner set forth in Md. Code Ann., Land Use, § 4-401.